

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

APPALACHIAN POWER COMPANY, SUBSIDIARY
OF AMERICAN ELECTRIC POWER ^{1/}

Employer

and

Case 9-RC-17478

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 978, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, ^{2/} the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

^{1/} The Employer's name appears as amended at hearing.

^{2/} The Employer and the Petitioner timely filed briefs which I have carefully considered in reaching my decision.

5. The Employer, a corporation, is engaged in the generation, transmission and distribution of electric power from several facilities throughout the United States, including four service centers in its Charleston, West Virginia district, which are at issue in this proceeding. For about 50 years, the Petitioner has represented a unit of approximately 90 production and maintenance employees employed in the Employer's Charleston district.

The Petitioner seeks to represent, as part of the currently recognized production and maintenance unit, four store room attendants employed in the Charleston district at the North Charleston service center. The Petitioner specifically requests that a self determination election be conducted to enable the store room attendants to choose whether to be included in the same unit and represented with the production and maintenance employees. The parties stipulated, and the record reflects, that the store room attendants at the North Charleston service center could constitute a separate appropriate unit.^{3/} On the other hand, the Employer maintains that the store room attendants constitute a separate appropriate unit. However, the Employer claims the inclusion of these employees in the production and maintenance unit would be inappropriate. The Petitioner is willing to proceed to an election in a separate store attendant unit if their inclusion in the production and maintenance unit is deemed inappropriate. The store room attendants at North Charleston have no history of collective bargaining.^{4/}

For the reasons set forth below, I find that the inclusion of the store room attendants in the production and maintenance unit would not render that unit inappropriate and that a self determination election among the store room attendants to determine whether they desire to be included in the unit with the production and maintenance employees is appropriate.

The North Charleston service center consists of two separate buildings referred to on the record as the service center building and building A-1 which is a “stones throw” from the service center building. The store room is essentially a warehouse where the store room attendants work and is located within the confines of the service center building. The store room attendants perform purchasing, shipping, receiving, warehousing, inventory and material handling functions in support of all persons employed in the Charleston district, including the production and maintenance employees represented by the Petitioner. The store room attendants drive trucks to deliver materials for use by production and maintenance employees at various jobsites and they operate fork lifts to move materials within the service center. The store room attendants are responsible for an extensive amount of electronic record keeping to maintain an accurate inventory of materials. The store room attendants stock and distribute materials, such as wire or transformers, to production and maintenance employees for use in electric transmission and

^{3/} I hereby correct the transcript on page 10, at lines 10 and 11, to reflect that the correct location for the North Charleston service center is 27th Street and Fifth Avenue, Charleston, West Virginia.

^{4/} The Petitioner represents production and maintenance employees employed by the Employer at locations other than North Charleston. Store room attendants are included in some of those production and maintenance units and excluded from others. Store room attendants in the Employer's Hazard, Kentucky district are represented by the Petitioner in a production and maintenance unit. In 1998 in Case 9-RC-17173, the parties entered into a stipulated election agreement in which they agreed that the store room attendants in the Charleston district constituted an appropriate unit. At the December 16, 1998 election in that matter the store room attendants voted against representation.

distribution systems. Their storage and distribution of items to other persons at the service center consists primarily of office equipment and supplies. A store room attendant estimated that 90 percent of the time he spends filling material and supply requisitions is for line crews in the production and maintenance unit. Indeed, the record discloses that the store room attendants have regular daily work related contact with production and maintenance employees when they fill requisitions on their behalf.

The wage rates for store attendants range from about \$12 per hour to \$18.68 per hour. They work shifts from 6 a.m. to 2:30 p.m. or 7 a.m. to 3:30 p.m. The store room attendants begin work before the production and maintenance employees so that they may load materials and supplies onto vehicles for use by production and maintenance employees in the field. Store room attendants spend about 90 percent of their work time at the North Charleston service center and about 10 percent away from that facility making deliveries.

The production and maintenance unit consists of linemen, station mechanics, measurement mechanics, meter readers and garage mechanics. Most of the production and maintenance employees work at or out of the North Charleston service center but a few work at the three outlying service centers within the Charleston district. There are no store room attendants stationed at the outlying service centers. Except for the garage mechanics who spend most of their time at the service center, the remaining production and maintenance employees work primarily away from the facility spending about 80 or 90 percent of their time in the field. The wage rates for production and maintenance employees range from \$9.79 per hour to \$23.46 per hour. The store room attendants' wages are higher than the meter readers but lower than the remaining employees in the production and maintenance unit. It appears that the production and maintenance employees work 8½ hour shifts beginning at 7:30 a.m. or 8 a.m. The station mechanics report for work at the A-1 building at the North Charleston service center while the other production and maintenance employees report to the service center building.

Linemen perform installation and maintenance work in the field on electric lines and related equipment such as transformers. Station mechanics do maintenance work in the field on substations which receive electric power transmitted from generating stations and lower the voltage for distribution to the consumer. The measurement electricians install and repair devices which measure electricity (meters) while the meter readers record information output by such devices. The garage mechanics maintain and repair vehicles.

In addition to the employees in the production and maintenance unit and the store attendants, other employees at the North Charleston service center are employed as clerical employees, engineers, technicians, dispatchers, supervisors and managers who are not represented by any labor organization. It appears that none of these individuals share any significant interest with the store room attendants or other unit employees.

The Charleston district is one of six districts within the Charleston region. However, the Employer has reorganized its corporate structure into business units along functional lines from a previously existing geographic based operation. The North Charleston service center is part of the Employer's energy delivery division headed by William Lhota, executive vice president. Lhota works in Columbus, Ohio, a 4-hour drive from Charleston, and is the lowest ranking Employer official with supervisory authority over production and maintenance employees and store room attendants at North Charleston. Each of the business units, except for the supply

chain in which the store room attendants are included, is headed by a senior vice president who reports directly to Lhota. As noted below, the supply chain business unit is headed by a vice-president (as opposed to senior vice-president) who reports to Lhota.^{5/}

David Wherle, stores supervisor, is the immediate superior of the four store room attendants at North Charleston and does not have any other employees under his supervision. Wherle reports directly to Larry Harper, Charleston region stores supervisor.^{6/} Wherle and Harper work at Charleston. Harper reports directly to Ted Schaub, material distribution director, who, in turn, reports directly to Michelle Kalnas, supply chain vice-president. Schaub and Kalnas work at Gahanna, Ohio, a suburb of Columbus. Kalnas reports directly to Lhota.

The linemen in the production and maintenance unit are supervised by supervisors of distribution services who report to David Kennedy, manager of distribution services for the Charleston region. Kennedy reports directly to Gene Jensen, vice-president for distribution. Jensen reports to Glenn Files, senior vice-president for distribution, who, in turn, reports to Lhota. Kennedy and Jensen work at Charleston. The record does not disclose the work location for Files.

The measurement mechanics and meter readers in the production and maintenance unit are included in the measurement department. The record does not disclose the identity of the immediate supervision of these employees but it reflects that Bill Romeo, manager of meter services at Charleston, has supervisory authority over them at some level. Romeo reports directly to Jack Carr, director of meter services at Columbus. Carr reports to Files.

The record reflects that the garage mechanics and station mechanics in the production and maintenance unit are not in the same business unit with each other or in the distribution business unit. The record fails to disclose the business unit in which these employees are located or the supervisory hierarchy over them.

All employees at the North Charleston service center are subject to the same employee handbook and receive virtually the same Employer-wide benefits. The benefits include health, life, disability, accidental death and dismemberment, dependent care and long term care insurance, pension, savings, holidays, vacation, jury duty, bereavement leave and an incentive plan. There is no evidence of any permanent or temporary interchange between the production

^{5/} The record is not entirely clear as to what constitutes a business unit or silo. It appears that the two terms are used interchangeably. The record does not support the factual assertions at page 3 of the Employer's brief that the reorganization resulted in the creation of only three business units: generation, transmission and energy delivery. Thus, James Perry, the Employer's labor relations manager, testified that human resources, stores (supply chain), stations (meter services) and line are all separate business units. (Tr. 118) Perry also testified that customer service department was a separate business unit, that the line business unit was separate from the station business unit, that measurement (meters) was in the same business unit with line and that the garage was in a separate (unspecified) business unit. (Tr. 128-130) Based on this testimony and an examination of Joint Exhibit 3, the Employer's organizational structure under Lhota, it appears that the senior vice-presidents and Kalnas each heads a separate business unit.

^{6/} Doug Combs supervises the store attendants in the Hazard district who are represented in a production and maintenance unit. Combs and Wherle, who supervises the store attendants at issue here share a common immediate superior in the person of Larry Harper.

and maintenance employees and the store attendants except that Barry Barfield transferred from meter reader to store room attendant in 1980.

ANALYSIS:

Section 9(a) of the Act only requires that a unit sought by a petitioning labor organization be an appropriate unit for purposes of collective bargaining, and there is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit or even the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950); *Overnite Transportation Company*, 322 NLRB 723 (1996). A self-determination election is the proper method for a union to add unrepresented employees to an existing represented unit. Under such circumstances, it must be determined whether the employees sought to be added constitute an identifiable and distinct segment so as to constitute an appropriate voting group. However, it is not necessary for them to constitute a separate appropriate unit. *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990). If the employees sought to be added constitute an appropriate voting group then their community of interest with employees in the existing represented unit must be examined. If the represented employees combined with the employees sought to be added would continue to be an appropriate unit, a self determination election is warranted. *University of Pittsburgh Medical Center*, 313 NLRB 1341, 1343 (1994). ^{7/}

The appropriateness of a given unit is governed by community of interest principles. In analyzing community of interest among employee groups, the Board considers bargaining history; functional integration; employee interchange and contact; similarity of skills, qualifications and work performed; common supervision and similarity in wages, hours, benefits and other terms and conditions of employment. *Armco, Inc.*, 271 NLRB 350 (1984); *Atlanta Hilton & Towers*, 273 NLRB 87, 89 (1984); *J.C. Penney Co.*, 328 NLRB No. 105 (1999). ^{8/}

In the instant matter, the parties stipulated, and the record reflects, that the store room attendants could constitute a separate appropriate unit. Thus, *a fortiori* they share a sufficient community of interest as a distinct and identifiable employee segment to constitute an appropriate voting group. However, the mere fact that the store room attendants could constitute a separate appropriate unit does not preclude their appropriate representation in the larger production and maintenance unit. In *M.B. Sturgis, Inc.*, 331 NLRB No. 173, slip. op. at p. 9 (2000), the Board held, "That some of the employees working for that employer may have some

^{7/} In support of this proposition, the Employer in its brief relies on *New Berlin Grading Co. v. NLRB*, 946 F.2d 527, 138 LRRM 2657, 2659 (7th Cir. 1991), enfd. 297 NLRB 763; *NLRB v. Raytheon Co.*, 918 F.2d 249, 251, 135 LRRM 2970 (1st Cir. 1990), enfd. 296 NLRB No. 162; and *NLRB v. Southern Indiana Gas & Electric*, 853 F.2d 580, 582, 129 LRRM 2092 (7th Cir. 1988), enfd. 284 NLRB 895. However, those cases are unavailing of the Employer's position that the store room attendants should not be included in the production and maintenance unit because in each case, the Courts enforced Board orders permitting previously unrepresented employees to be included in existing represented units.

^{8/} In its brief, the Employer cites *Gould, Inc.*, 263 NLRB 442, 445 (1982) and *NLRB v. CIMCO*, 964 F.2d 513, 518, 140 LRRM 2817 (5th Cir. 1992); where community of interest factors are discussed. However, *Gould* raised an accretion issue and *CIMCO* involved craft severance under the standard in *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966). Thus, in neither case was an issue raised as to whether a group of unrepresented employees shared a sufficient community of interest with an existing represented unit to permit their representation in a combined unit.

differing terms and conditions of employment from those of their colleagues does not ordinarily mean that those employees cannot be included in the same unit, although it might, in some circumstances, permit them to be represented in a separate unit." Thus, it is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *Overnite*, supra. at 723; *Rohrstein Corporation*, 233 NLRB 545, 547 (1977).

It is evident from the foregoing analysis that the degree of community of interest among employee groups necessary to *permit* their being represented in a single unit is less than that which would *require* their inclusion therein.^{9/} Therefore, the propriety of a self-determination election in the instant matter turns on whether, notwithstanding that the store room attendants may have a sufficiently distinct community of interest to *permit* their separate representation, they also share a sufficient community of interest with the existing production and maintenance employees to *permit* their inclusion in that unit; or conversely whether their inclusion would render the production and maintenance unit inappropriate.

The store room attendants are in a separate business unit and are supervised separately from the employees in the production and maintenance unit. Lhota, the lowest ranking supervisor over both the linemen and the store room attendants, resides at the fifth level of supervision. I note, however, that the garage mechanics and the station mechanics in the production and maintenance unit are not in the same business unit with each other or with the linemen. Thus, the employees in the existing production and maintenance unit are organized into at least three different business units. Moreover, the store room attendants in the Hazard district, who share common second level supervision with the store room attendants at issue here, are currently represented by the Petitioner in a production and maintenance unit. The evidence demonstrates, therefore, that the supervision of the store room attendants here is no more separate from the production and maintenance unit as a whole than is the supervision among the group of production and maintenance employees in the current unit. The fact that the production and maintenance employees are organized into at least three different business units, but are represented in a single unit, and that the Hazard store room attendants are represented in a production and maintenance unit indicates, based on bargaining history, that the separate supervision of the store room attendants is not an impediment to their representation in a production and maintenance unit.

The evidence shows that the work of the store room attendants is distinct from that of the other employees in the production and maintenance unit in terms of the tasks performed but that the work of the store room attendants is functionally integrated with the work of the linemen. The store room attendants spend most of their time at the service center whereas the production and maintenance employees, except for the garage mechanics, spend most of their time working

^{9/} See, *Overnite*, supra. at 724 where the Board stated that its prior finding permitting the inclusion of mechanics in a unit of drivers and dock workers at a different terminal of the employer was not inconsistent with its refusing to require their inclusion in a drivers and dock workers unit at the terminal at issue in that case. There, the Board did not rely on any differences in the employees' community of interest at the two terminals but rather based its conclusion on the fact that a petitioning labor organization need only seek *an* appropriate unit. Similarly, the fact that the Petitioner in 1998 agreed and was permitted to proceed to an election in a unit limited to district store attendants does not mean that the store room attendants may not be permitted in the instant matter to choose to be represented in the existing production and maintenance unit. In any event, the Board in determining units have long held that it is not bound by a prior unit stipulation by the parties. *Mid-West Abrasive Co.*, 145 NLRB 1665 (1964).

in the field. Except for the garage mechanics, the production and maintenance employees' work is directly related to the transmission and distribution of electricity while the store room attendants and the garage mechanics support that function. Moreover, the garage mechanics in the production and maintenance unit, like the store room attendants, perform supportive work primarily at the service center.

The store room attendants are the only employees responsible for obtaining, storing and distributing materials and supplies to persons who work at the service center. Thus, the store room attendants perform a unique and distinct function. None of the other employees at the service center have job duties relating to the warehousing, inventorying and distribution of materials and supplies or are required to perform record keeping to the same extent as the store room attendants. Although the garage mechanics' functions are entirely different from those of the store room attendants, they similarly perform a unique function.

The end purpose for the store room attendants' work is the filling of requisitions for materials and supplies for persons working at the service center. The record shows that about 90 percent of this work by the store room attendants is performed in support of the linemen in the production and maintenance unit. Therefore, in terms of functional integration and work related contact, the store room attendants share a stronger link with the linemen in the production and maintenance unit than with any other group of persons working at the service center. For example, it would appear, based on the work performed by meter readers, that in terms of functional integration and work related contact, the linemen have closer ties to the store room attendants than they do with the meter readers.

There is no evidence of any meaningful interchange between the production and maintenance employees and the store room attendants. My ability to evaluate the significance of this lack of interchange is, however, restricted by the lack of record evidence concerning interchange among the employee groups within the existing production and maintenance unit. Further, the record discloses that the wages and hours of the store room attendants are similar to those of the production and maintenance employees, all employees are subject to the same employee handbook and they have nearly identical benefits.

The fact that the store room attendants work at the same location as the production and maintenance employees, have similar working hours and wages, are subject to the same employee handbook and benefits and are closely linked to the linemen in terms of functional integration and contact demonstrates that they share a significant community of interest with the employees in the existing production and maintenance unit. The differences in tasks performed and supervision as well as the lack of interchange do not appear to be any greater for the store room attendants than they are among employee groups in the existing production and maintenance unit. Thus, it would appear that the linemen and measurement mechanics who are organized in the same business unit would share a community of interest with the store room attendants to no lesser a degree than they would with the garage mechanics. Moreover, the parties' bargaining history suggests that the inclusion of the store room attendants in the existing production and maintenance unit will not pose an impediment to collective bargaining. For these reasons, I conclude that the store room attendants share a sufficient community of interest with the employees in the existing production and maintenance employees to permit their inclusion in that unit and that such inclusion would not render the unit inappropriate.

This conclusion is consistent with the Board's decision in *Sohio Natural Resources Company*, 237 NLRB 1261, 1262-1263 (1978), where it permitted the inclusion of warehouse employees in a unit of mill (production) employees who processed uranium. In *Sohio*, the warehouse employees received, stored, inventoried and dispensed materials and supplies to all areas of the employer's mining site including the mill employees in the unit and the mining employees excluded from the unit. The functions of the warehouse employees compared to the mill employees in *Sohio* are analogous to the functions of the store attendants as they relate to the linemen in the instant matter. In *Sohio*, the Board permitted the inclusion of the warehouse employees in a unit with the mill employees based solely on their related job functions and their sharing of common fringe benefits, despite the fact that they were supervised separately from the mill employees and unlike the mill employees, they were salaried and did not punch a time clock.

The Employer's reliance in its brief on *Fletcher Jones Chevrolet*, 300 NLRB 875 (1990) is misplaced. In *Fletcher*, the Board found that the unit of service technicians sought by the Union was appropriate, despite the Employer's contention that the only appropriate unit was broader in scope. In *Fletcher*, the community of interest standard, resting on craft status, was different from the standard applicable in the instant case. Moreover, even if the community of interest standard were the same, *Fletcher* merely supports the parties' stipulation that the store attendants could constitute an appropriate unit. However, as previously noted, the separate appropriate unit status of the store room attendants does not affect the question as to whether they may be appropriately represented in the existing production and maintenance unit.

In view of the foregoing findings, I shall direct that an election be held among the following group of employees:

All store room attendants employed by the Employer at its North Charleston service center located at 27th Street and 5th Avenue, Charleston, West Virginia, but excluding all other employees, office clerical employees and all professional employees, guards and supervisors as defined in the Act.

If a majority of the employees in this voting group vote for the Petitioner, they will be taken to have indicated their desire to be included in the existing production and maintenance unit currently represented by the Petitioner. If a majority of them vote against the Petitioner, they will be taken to have indicated their desire to remain unrepresented. In either event, the undersigned will issue an appropriate certification.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the voting group found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting group who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the

military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the **International Brotherhood of Electrical Workers, Local 978, AFL-CIO.**

LIST OF ELIGIBLE VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **December 5, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **December 12, 2000**.

Dated at Cincinnati, Ohio this 28th day of November 2000.

/s/ Richard L. Ahearn /s/

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